Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-1032

REFRIGERATED FOOD LINE, INC., *et al., Petitioners,*

v.

REPUBLIC INDUSTRIES, INC., *et al., Respondents.*

Petition For A Writ of Certiorari To The United States Court of Appeals For The Eighth Circuit

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RESPONDENTS' OPPOSITION TO PETITION

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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COUNTER STATEMENT OF THE QUESTIONS PRESENTED

Petitioner RFL asserts that the trial judge and the unanimous Court of Appeals were wrong in holding that there was no credible evidence to support an alleged conspiracy to exclude it from competing in the leasing market for refrigerated trailer units. In order to make a Supreme Court question out of this failure to convince any judge that there was an evidentiary basis for the alleged conspiracy, RFL asserts that its Fifth Amendment rights were violated. Its first question assumes that this conspiracy theory was not "con-

sidered or passed upon by the District Court" and "not briefed or argued" in the appellate court (Petition, at 2-3).

The trial court disposed of the conspiracy issue in granting judgment n.o.v. as follows:

> "In this antitrust suit the plaintiff corporation contends that its financial failure was due to an unlawful conspiracy between the defendant corporations to restrain trade by excluding plaintiff from competing in the leasing market for refrigerated trailer units. This was the sole issue (a Sherman Act, Section One, violation) upon which plaintiff requested a verdict authorizing instruction.
>
> "Without summarizing the evidence, or lack of evidence, this Court finds that the plaintiffs wholly failed to make a case on this issue." *Refrigerated Food Line, Inc.* v. *Republic Industries, Inc.*, 605 F.2d 412, 417 (8th Cir. 1979).[1]

As the Court of Appeals pointed out in its footnote 10 at Page 418, the Defendants did not even argue in support of the District Court's alternative new trial ruling. The argument on the appeal was thus confined to the no conspiracy ruling which was the sole basis for the n.o.v. judgment.

Since the Petition seeks Supreme Court review on a patently false premise, it may be denied without consideration of the argument following Petitioners' erroneous Statement of the Questions Presented.

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[1] The Petitioners' failure to attach the Opinion it wants reviewed to its Petition, whether inadvertent or not, is all that prevents exposure of Petitioners' misrepresentation of what the courts below did, on the face of the Petition.

ARGUMENT

In any event, there is no reason to review the Eighth Circuit's decision in this case. The Petitioners' statement of alleged facts makes no effort to deal with the careful and thorough recital of facts appearing in the appellate opinion. Those facts are supported by evidence. The Petitioners' record citations do not support its own factual claims or refute anything said in the opinions below.

Instead of trying to show on appeal that the no conspiracy holding of the trial judge was wrong, RFL tried to show that his subsidiary statement as to the general availability of trailers was mistaken. It tried to do this by pointing to evidence that trailers were in short supply when Earl Lewis and the minority shareholders bought the Bilyeu business and renamed it RFL. Lewis' favorable terms for RFL on the World Leasing trailers he then owned gave RFL a competitive advantage in the refrigerated trailer leasing market. Refrigerated trailers were not available from anyone else on comparable terms, then or at any other time.

When Earl Lewis sold World to Republic, those trailers became a Republic asset. Mr. Riss retained Mr. Lewis as President of World on the mistaken assumption that Lewis would further World's interest by collecting any overdue rentals on its trailers. Instead, he allowed RFL's debt to continue in default to benefit his 35% interest in RFL. Earl Lewis and the other RFL shareholders knew that continuance of this accommodation of RFL by Lewis must end whenever Mr. Riss discovered Lewis' adverse interest in RFL. Lewis was fired as President of World by

Robert Riss when Riss discovered this conflict of interest. RFL then had to compete for trailers in the leasing market and could not lease them on terms that would keep it afloat.

We respectfully submit that the Petition should be denied.

Respectfully submitted,

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